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Letter dated 15 October 1997 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith the text in English and French of the joint legal opinion dated 24 September 1997 prepared by three prominent international jurists and professors of international law, Mr. James Crawford, of the University of Cambridge, Mr. Gerhard Hafner of the University of Vienna and Mr. Alain Pellet of the University of Paris, X - Nanterre, on the eligibility of the Republic of Cyprus to become a member of the European Union. It is noted that all three authors of the opinion are also members of the International Law Commission.

The above legal opinion concludes that the Republic of Cyprus is fully eligible to become a member of the European Union and authoritatively rejects the positions of the representative of Turkey contained in documents A/51/951-S/1997/585 dated 25 July 1997 and A/52/404-S/1997/757 dated 29 September 1997. It particularly concludes that there is no basis for the view that Cyprus is prevented by the Treaty of Guarantee, or by any provisions of the Cyprus Constitution of 1960, from becoming a member of the European Community .

I should be grateful if the present letter and its annex were circulated as a document of the General Assembly, under agenda item 61, and of the Security Council.

(Signed) Nicos AGATHOCLEOUS
Ambassador
Permanent Representative of
the Republic of Cyprus to
the United Nations

ANNEX*

[Original: English and French]

OPINION

Republic of Cyprus: Eligibility for EU Membership

Summary

1. We are asked whether the Republic of Cyprus is eligible to become a member of the European Union. In this regard it is necessary to consider:

(a) Article 1 paragraph 2 of the Treaty of Guarantee, 1960;

(b) Article 50 of the Constitution of Cyprus, 1960; and/or

(c) Article 170 of the Constitution.

In our opinion, the answer is: yes. The Republic of Cyprus is eligible to become a member of the EU. In particular:

- Article 1 paragraph 2 of the Treaty of Guarantee does not prohibit Cyprus from becoming a member of a regional organisation such as the European Union. Membership of the EU would not constitute participation "in any political or economic union with any State whatsoever" within the meaning of Article 1 paragraph 2.
- As to Article 50 of the Constitution, there is no person now filling the role of Vice-President, and the provisions dealing with the powers of the Vice President are in abeyance. Thus the Vice-Presidential veto provided for in Article 50 cannot be exercised. In any event the accession of Cyprus would not involve, in present circumstances, a "manifest" breach of internal law within the meaning of Article 46 of the Vienna Convention on the Law of Treaties, and thus it could not subsequently be invoked by Cyprus as a basis for invalidating its consent to be bound by the EU treaties.
- Article 170 provides for most-favoured nation treatment to be extended by Cyprus to the three guarantor states "for all agreements whatever their nature may be". Such treatment has only to be extended "by agreement on appropriate terms". In common with other most-favoured-nation clauses, Article 170 does not prohibit Cyprus from entering into agreements which confer benefits on third states; it envisages that benefits extended to the most-favoured-nation will also be extended to each of the guarantors. Thus Article 170 does not prohibit Cyprus from acceding to any agreement whatever. In fact, EC membership is not regarded as triggering general mfn obligations, under the GATT or otherwise. Turkey as a GATT contracting party and applicant for EU membership is well aware of this practice. Both Turkey and Greece, in bilateral treaties concluded with Cyprus after independence, have recognised that mfn obligations in respect of trade in products do not apply "to privileges... preferences or concessions... granted... in the future to other countries on account of... participation, entry or association... [to] a customs union, a free trade area or an economic community". For these reasons Article 170 would not require Cyprus to extend any additional benefits of EU membership to Turkey.

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* The present annex is being reproduced as received, in the languages of submission.

The Status of the Republic of Cyprus

2. An initial point to be noted is that the Republic of Cyprus is recognised as an independent state, including by all existing members of the EU. The Government of Cyprus, based in Nicosia, is equally regarded as the government of the Republic, with the normal competence and authority to represent the state. This is so notwithstanding the constitutional difficulties that have occurred in Cyprus since 1963, and the *de facto* division of the island following the Turkish invasion in 1974.[1]

3. By contrast, no other entity within Cyprus is recognised as a state, as the government of a state, or as having any degree of separate legal status or personality on the international plane. The "Turkish Republic of Northern Cyprus", the entity created in the north of the island following the events of 1974, is recognized only by Turkey. The lack of international status of the "Turkish Republic of Northern Cyprus" has been consistently reaffirmed by the Security Council[2] as well as by the General Assembly,[3] and by the European Court of Human Rights,[4] the European Court of Justice,[5] and national courts.[6] For example in a case concerning the 1977 Protocol to the 1972 Association Agreement between the EC and Cyprus, the European Court of Justice said:

> "While the *de facto* partition of the territory of Cyprus, as a result of the intervention of the Turkish armed forces in 1974, into a zone where the authorities of the Republic of Cyprus continue fully to exercise their powers and a zone where they cannot in fact do so raises problems that are difficult to resolve in connection with the application of the Association agreement to the whole of Cyprus, that does not warrant a departure from the clear, precise and unconditional provisions of the 1977 Protocol on the origin of products and administrative cooperation... Article 5 cannot in any event confer on the Community the right to interfere in the internal affairs of Cyprus. The problems resulting from the de facto partition of the island must be resolved exclusively by the Republic of Cyprus, which alone is internationally recognized."[7]

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[1] Amongst numerous statements to this effect see SC Res 367 (1975), para 1; Report of the Secretary-General on his Mission of Good Offices in Cyprus, S/23121, 8 October 1991, paras 18-20.

[2] See esp SC Resns 541 (1983), 550 (1985). For the more recent resolutions see below, para 23.

[3] See GA Res 37/253, 16 May 1983.

[4] See most recently *Loizidou v Turkey (Preliminary Objections)* ECHR Ser A vol 310 (1995) 18; *Loizidou v Turkey (Merits)* (1996) 108 ILR 443, paras 19-23, 42-6, 56, with references to earlier decisions of the Commission and the Council.

[5] *R v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd* [1994] ECR I-3087; 100 ILR 258.

[6] In the UK see *Hesperides Hotels Ltd v Aegean Turkish Holidays Ltd* [1979] AC 508, 73 ILR 9; *R v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd* (1994) 100 ILR 244; *Polly Peck International plc v Nadir (No 2)* [1992] 4 All ER 769, 773; *Caglar v Billingham* [1996] STC (SCD) 152, 108 ILR 510.

[7] *R v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd* [1994] ECR I-3087, 3131, 3133-4; 100 ILR 258, 297-9.

4. Against this background we turn to consider the three provisions which, it is said, prevent Cyprus from becoming a member of the EU, or at any rate from doing so before Turkey also becomes a member.[8]

Article I paragraph 2 of the Treaty of Guarantee

5. The Treaty of Guarantee of 16 August 1960 was concluded between Cyprus on the one part and the three guarantors, Greece, Turkey and the United Kingdom on the other part, on the day Cyprus became independent.[9] Article I of the Treaty provides:

> "The Republic of Cyprus undertakes to ensure the maintenance of its independence, territorial integrity and security, as well as respect for its Constitution.
>
> It undertakes not to participate, in whole or in part, in any political or economic union with any State whatsoever. It accordingly declares prohibited any activity likely to promote, directly or indirectly, either union with any other State or partition of the Island."

By Article II, the three guarantor states "taking note of the undertakings of the Republic of Cyprus set out in Article I... recognise and guarantee the independence, territorial integrity and security of the Republic of Cyprus, and also the state of affairs established by the Basic Articles of its Constitution."

6. We note that at different stages questions have been raised as to the interpretation, continuing validity or legal effect of the Treaty of Guarantee. Such issues only need to be considered if the provisions of the Treaty would be infringed by Cyprus's accession to the EC. For the reasons given here this is not the case.[10]

7. One point is, however, crucial to the interpretation of Article 1 paragraph 2 of the Treaty. That provision embodies an unconditional and permanent prohibition upon partition or union with any state. It is not limited to cases of union through membership of organisations or participation in treaties to which Greece and Turkey are not members or parties. Accordingly, if Article 1 paragraph 2 is interpreted as prohibiting Cyprus from becoming a member of the EU, that prohibition is permanent and unconditional. It has nothing to do with the question whether or when Turkey may become a member of the EU.

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[8] In dealing with these arguments, we will also deal, to the extent they are relevant, with the positions contained in an "Opinion of Professor M.H. Mendelson QC on the Application of the Republic of Cyprus to Join the European Union", 6 June 1997 with a supplementary note of 21 July 1997. We have not thought it necessary to discuss the many factual assertions in that Opinion which are not relevant to the legal issue of eligibility. We note that most of these assertions are based on ZM Necatgil, *The Cyprus Question and the Turkish Position in International Law* (2nd edn, 1996), a work of doubtful objectivity since the author was "Attorney-General of the Turkish Republic of Northern Cyprus". We append a select bibliography of the literature dealing with the Cyprus conflict, to which we have referred in producing this Opinion.

[9] UKTS 1961 No 5; 164 BFSP 388.

[10] Nor have we dealt with any of the policy issues that need to be resolved in the accession negotiations; these are a matter for discussion between the EU and Cyprus.

8. The immediate precursor of Article 1 paragraph 2 was Point 22 of the "Basic Structure of the Republic of Cyprus", initialled by the Greek and Turkish Prime Ministers at Zurich on 11 February 1959. Point 22 provided:

> "It shall be recognised that the total or partial union of Cyprus with any other State, or a separatist independence for Cyprus (i.e., the partition of Cyprus into two independent States), shall be excluded."[11]

The purpose of Point 22 was to exclude both *Enosis* and *Taksim* - union of Cyprus with Greece, or division of the island leading to the union, or close association, of one part with Greece and the other with Turkey. These were the avowed aims of the two communities during the 1950s: the compromise underlying the Zurich and London Accords of 1959 involved the abandonment of both. But the question is whether Article 1 paragraph 2 of the Treaty of Guarantee also had the effect of preventing Cyprus from ever becoming a party to a supranational regional economic agreement such as the EEC (now the EU).

The interpretation of Article 1 paragraph 2

9. To answer that question it is necessary to apply the international law rules of the interpretation of treaties. These are authoritatively set out in Articles 31-33 of the Vienna Convention on the Law of Treaties of 1969,[12] which relevantly provide as follows:

> Article 31 *General rule of interpretation*
>
> 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
>
> 3. There shall be taken into account, together with the context...
>
> (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation...
>
> Article 32 *Supplementary means of interpretation*
>
> Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
>
> (a) leaves the meaning ambiguous or obscure; or
>
> (b) leads to a result which is manifestly absurd or unreasonable.

Thus the first step in any process of treaty interpretation is to consider the actual language of the treaty provision in its context and in the light of its object and purpose.

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[11] Text in: *Conference on Cyprus. Documents signed and initialled at Lancaster House on February 19, 1959* (Cmnd 679) p 9; also 164 BFSP 219.

[12] 1155 UNTS 331. As at 31 December 1995 the Convention had 77 parties, including Cyprus, Greece and the United Kingdom, but not Turkey. By reason of Art 4 the Vienna Convention is not in force as such in relation to the Treaty of Guarantee, but many of its provisions, including Arts 31-33, are considered to reflect general international law. Cf *Re the Draft Treaty on a European Economic Area (No 1)* (Opinion 1/91) [1991] ECR I-6079, 6101; 100 ILR 165, 186; ICJ, *Case concerning the Gabcikovo-Nagymaros Project (Hungary v Slovakia)*, Judgment, 25 September 1997, para 47.

The ordinary meaning of Article I paragraph 2

10. The second paragraph of Article I consists of two sentences. The first contains a commitment by Cyprus itself "not to participate, in whole or in part, in any political or economic union with any State whatsoever". The second declares that any activities likely "to promote, directly or indirectly, either union with any other State or partition of the Island" are prohibited. This is evidently aimed, *inter alia*, at popular agitation in favour of *enosis* or partition, and thus extends beyond the actions of the Government of Cyprus itself.

11. It should first be noted that the term "State" in Article I is in the singular.[13] Moreover it is legitimate to take as the context of paragraph 2 the Constitution itself, to which paragraph 1 refers. Article 50 of the Constitution refers to "international organisations and pacts of alliance". Article 169 of the Constitution refers to "international agreements with a foreign State or any International Organisation relating to commercial matters, economic co-operation... and *modus vivendi*". Article I paragraph 2 of the Treaty of Guarantee thus proceeds on the basis of a distinction between a "political or economic union with any State", on the one hand, and "international organisations and pacts of alliance", or economic cooperation agreements, on the other hand. It is true that a "political or economic union with any State" could be initiated by a treaty. But what is prohibited by Article I paragraph 2 is union with *another* state, not cooperation with a group of states in establishing a supranational organization of a political and/or economic character.

12. It should be noted that from the earliest development of international organisations in the 19th century, the term "union" was quite often used.[14] Examples include, at the universal level, the International Telecommunications Union (1865) and the Universal Postal Union (so titled from 1878) and, at the regional level, the Western European Union (1954). Cognate terms such as "unity" and "united" are also often used, either in the title of the organisation, as in the Organisation of African Unity, or in terms of its purposes, as with Article I of the Statute of the Council of Europe.[15] But a distinction has always been drawn between membership of multilateral or plurilateral organisations of states (whatever their title), and the political or economic union of one state with another state.

13. That distinction holds for the European Union. It is not necessary for present purposes exhaustively to analyse the European Union as it currently exists under the Treaty on European Union of 7 February 1992 (the Maastricht Treaty), or as it will become following the 1997 Intergovernmental Conference.[16] Despite the continuing evolution of the EU, the position is clear enough. For example, the German Federal Constitutional Court has

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[13] So also Art 185 (2) of the 1960 Constitution, which provides that "The integral or partial union of Cyprus with any other State or the separatist independence is excluded."

[14] Cf C Parry, *Encyclopaedic Dictionary of International Law* (1984) 411.

[15] 87 UNTS 103. The French text of Art I states that the aim of the Council is "de réaliser une union plus étroite entre ses Membres"; the English text speaks of "a greater unity between its Members". As far as we are aware, no objection was raised to Cyprus' membership of the Council of Europe, even during the period (1969-1974) when Greece was not a member.

[16] See Conference of the Representatives of the Governments of the Member States, Draft Treaty of Amsterdam, Brussels, 19 June 1997: CONF/4001/97. For example Art F para 3 provides that "The Union shall respect the national identities of its Member States."

described the EU as "a supranational organization, which is separate from the State authority of the Member States",[17] a "supranational system of competences".[18] According to the Court, the Maastricht Treaty...

> "establishes a European Union of States which is to be borne by the Member States and respects their national identity. It relates to Germany's membership of supranational organizations, not membership of a European State... The exercise of sovereign authority by a union of States such as the European Union is based on powers conferred by States which remain sovereign and which, at international level, always act through their governments and thereby control the process of integration."[19]

A similar point is expressed by Article 88-1 of the French Constitution, which describes the EC and the EU as "established by States having freely chosen, pursuant to the constitutive treaties of those entities, to exercise certain of their powers in common". The French Constitutional Council had described the EU as "an independent legal order which, although integrated into the legal systems of the different Member states of the Communities, does not form part of the institutional order of the French Republic".[20] This recalls the well-known description of the EEC, given by the European Court of Justice in 1964, as a distinct "legal system which... became an integral part of the legal systems of the Member States".[21] The European Court has never suggested that the legal system of each member state has become an integral part of the legal systems of the other members.

14. Rather, what each of the descriptions quoted in the previous paragraph seeks to convey is that, although the EU is a distinct community with its own legal system and an existence separate from that of its member states, and although it aspires to a "more perfect union", it is a legal system of a transnational character in which each member state participates.[22] The member states have transferred certain defined elements of governmental authority to the EU, not to each other. The law of the EU is part of the laws of the member states, but the laws of the member states remain distinct from each other, each controlled by its own constitutional system. The EU is not a state, and it is inaccurate to describe any individual member state as economically or politically in union with other individual member states. In the language of the French Constitutional Council, no member state "forms part of

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[17] *Maastricht Treaty Constitutionality Case* (1993) 98 ILR 196, 216.

[18] Ibid, 217.

[19] Ibid, 221, 223, 225. See further I Winkelmann, *Das Maastricht-Urteil des Bundesverfassungsgerichts vom 12. Oktober 1993* (Duncker & Humbolt, Berlin, 1994), p 752.

[20] Conseil constitutionnel, Décision n° 92-308 DC du 9 avril 1992, *Traité sur l'Union européenne, Recueil des décisions* 1992, 55, 62 (para 34), reprinted in (1992) 93 ILR 338, 347. The Council held that in certain respects French ratification of the Maastricht Treaty required a constitutional amendment. The proposed amendment was held to be constitutional in Conseil constitutionnel, Décision n° 92-312 DC du 2 septembre 1992, *Traité sur l'Union européenne, Recueil des décisions* 1992, 76, reprinted in (1992) 98 ILR 180, and was subsequently approved at a referendum.

[21] *Costa v Ente Nazionale Energia Elettrica* (Case 6/64) (1964) ECR 585, 593; 93 ILR 38. Cf *Re the Draft Treaty on a European Economic Area (No 1)* (Opinion 1/91) [1991] ECR I-6079, 6102; 100 ILR 165, 187.

[22] It is worth recalling that the Council of Europe too provides for "a greater unity" ("une union plus étroite") between its Members: see note 15 above.

the institutional order" of any other member state. Rather they are all linked in and through the community of the EU.[23]

15. This is a very different situation than the one envisaged and prohibited by Article 1 paragraph 2 of the Treaty of Guarantee, which was concerned to prevent Cyprus, or any part of Cyprus, becoming united with another particular state. In fact, of course, the concern was to prevent any form of political or economic union with either Greece or Turkey. As Professor Lavroff put it at the time: "On voit bien ici que la raison d'être des accords du 19 février 1959 est de couper court aux prétentions émises par la Grèce et la Turquie..."[24] Although for form's sake these two states were not mentioned, it was precisely the formation of a statal union with either, in whole or in part, that was excluded. It was such a union which the two communities unsuccessfully sought to achieve in the conflicts of the 1950s. On the basis of the ordinary meaning to be given to the first sentence of Article 1 paragraph 2 in its context and in the light of its object and purpose, membership of the EU does not involve "political or economic union with any State".

16. It might be argued that the effect of EU membership is *indirectly* to promote union with any State, in that Cyprus by reason of its small size and population would inevitably tend to be dominated *indirectly* by other member states through the medium of the EU, and that this is contrary to the second sentence of paragraph 2.[25] The simple answer, however, is that the prohibited result under *both* sentences of paragraph 2 is "union with any other State or partition of the Island". The position in the EU, both formally and in substance, is that the member states exercise collective control over the institutions of the EU, which in turn generates the rules and policies which member states must apply. There is no analogy whatever to the situation described by Judge Anzilotti in his decisive opinion in the *Austro-German Customs Union* case, where...

> "In view of the great disproportion in the economic strengths of Germany and Austria... Austria's economic life would sooner or later become dependent upon Germany's... and its effect would therefore be to conform and strengthen the movement towards the incorporation of Austria within a single big German State".[26]

By contrast, Cyprus as a member of an organisation such as the European Union with between 15 and 21 members would be *less* dependent on any single state.

Subsequent practice in the application of Article 1 paragraph 2

17. Under Article 31 (3) (b) of the Vienna Convention, the subsequent practice of the parties to a treaty is to be taken into account if it establishes their agreement as to the

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[23] By the same token EU citizenship is an additional citizenship conferred by the Maastricht Treaty on the citizens of member states. Each member state continues to determine who are its citizens; EU citizenship is complementary. Moreover, although citizens of EU member states possess certain rights by virtue of their EU citizenship, they do not thereby become citizens of other EU states. Thus, for example, German citizenship remains quite distinct from Greek citizenship, and *vice versa*.

[24] DG Lavroff, "Le statut de Chypre" (1961) 67 *RGDIP* 544; see also G Ténékidès, *Chypre. Histoire récente et perspectives d'avenir* (Nagel, Paris, 1964) 123.

[25] This argument is briefly made in the Mendelson Opinion, 36-7.

[26] PCIJ Ser A/B No 41 (1931) at 71-2. See further below, para 23.

interpretation of the treaty. Subsequent practice in the application of the Treaty of Guarantee suggests that it has not been regarded by the parties as preventing Cyprus from entering into treaties for closer economic and political relations with groups of states. Perhaps the best example is the Association Agreement between the EEC and Cyprus, signed at Brussels on 19 December 1972.[27] The Agreement envisages a customs union between Cyprus and the EEC (Article 2 (3)), and adopts a principle of non-discrimination as between nationals or companies of member states, and also as between nationals or companies of Cyprus (Article 5). Objections to the conclusion of the Agreement were made in 1972 from the Turkish Cypriot side, but the EEC disregarded these on the ground that they were internal matters for Cyprus.[28] Turkey for its part expressed concern over the possibility of discrimination against the Turkish community in Cyprus, a concern addressed by Article 5 of the Agreement. Neither the United Kingdom nor Turkey argued that the conclusion of the Association Agreement was a breach of Article 1 paragraph 2 of the Treaty of Guarantee: no-one suggested that the Agreement indirectly created or envisaged an economic union with any existing member of the EEC.[29] This example is all the more significant in that, as Professor Toulemon put it, such an association is a "stage vers l'adhésion", a probationary step in the direction of membership.[30]

The travaux préparatoires of Article 1 paragraph 2

18. Under Article 32 of the Vienna Convention, regard can always be had to the *travaux préparatoires* of a treaty in order to confirm its interpretation. In fact, agreement on Point 22, the precursor of Article 1 paragraph 2, was reached by the Greek and Turkish Foreign Ministers at Zurich on 11 February 1959, and was subsequently confirmed in discussions with the British Government. The two Foreign Ministers reported their agreement to the British Foreign Secretary on 12 February 1959, at which meeting the following exchange took place:

> "The Secretary of State... turned to the Zürich documents beginning with the Treaty of Guarantee. Was the second paragraph of Article 1 intended to preclude Cypriot membership of all international associations, as for example the Free Trade Area if that ever came into existence.
> *M. Zorlu* explained that the paragraph was intended to prohibit partition and Enosis (whether with Greece or with any other country). *M. Averoff* agreed; he explained that the wording was specifically designed to exclude possible Greek devices in the direction of Enosis, such as a personal union of Cyprus and Greece under the Greek Crown. *M. Zorlu* and *M. Averoff* both made it clear that there would be no objection to Cypriot membership of international associations of which both Greece and Turkey were members; e.g., the Postal Union, and any Free Trade Area. Nor did they exclude either Commonwealth membership

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[27] *OJEC* No L 133/1 (1973). There have been 6 amendments to the Agreement, most recently in 1987 (*OJEC* No L 393/13 (1987)) and 1995 (*OJEC* No L 278 (1995)). The 1987 Protocol initiated the second stage of association, with a view to a complete customs union within 15 years (Art 31).

[28] See above, para 3.

[29] The Turkish objections in 1972 are summarized in *Europe* No 986, 16 February 1972. They do not rely on Article 1 of the Treaty of Guarantee.

[30] R Toulemon, "L'association à la Communauté économique est-elle une formule d'avenir?" (1967) No 100 *Revue du Marché Commun* 150.

> for Cyprus or membership of the Sterling Area. They would, indeed, welcome Commonwealth membership... Article 1 of the Treaty of Guarantee could be amended if necessary to make clear that neither Commonwealth nor Sterling Area membership were excluded. But the final decision on such membership would, of course, rest with the Cypriots themselves."[31]

Evidently the Foreign Secretary accepted this explanation, and no amendment to Article 1 was found necessary.[32]

19. The matter was raised again in the London Joint Committee on Cyprus on 19 October 1959. The Committee, which consisted of Greek Cypriot and Turkish Cypriot representatives as well as representatives of the United Kingdom, Greece and Turkey, was responsible for finalizing the various texts in accordance with the provisions agreed on by the three states at Zurich and London. At the 26th meeting of the Committee, the following exchange took place between the British chairman and the senior Greek Cypriot representative:

> "SIR KNOX HELM then asked if, apart from the proposed Article V Mr Rossides accepted the draft text.
> MR ROSSIDES replied affirmatively. He then asked the meaning of Article I paragraph 2. He presumed it referred to union with Greece or Turkey, but it seemed rather sweeping, as he supposed that Cyprus could for instance join an economic organisation or the Commonwealth.
> SIR KNOX HELM observed that that was coming near to re-examining the wording of the Treaty, and that it was perhaps better not to start to try to interpret the various Articles.
> M. ROUMOS said he thought they could all assure Mr. Rossides and put on record that it was certainly not intended that Cyprus should be precluded from membership of the Free Trade Area or multilateral organisations. What was meant was that Cyprus should not be politically united with Greece or Turkey, or even economically in the narrow sense of customs union; but that could not really be said in a Treaty.
> M. BAYULKEN confirmed that the wording did not refer to any international organisations, such as F.A.O., G.A.T.T., etc.
> MR. ROSSIDES thanked M. Roumos and M. Bayulken for their explanation, and then said that he must reply to Sir Knox Helm's remark that he was trying to open discussion of the Treaty. When starting, he had said that he did not dispute it, and had asked for elucidation... His Delegation had received a

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[31] "Record of a Meeting Held at the Foreign Office at 4 p.m. on Thursday, February 12, 1959", FO 371/144640, p 2. The reference in this passage to "membership of international associations of which both Greece and Turkey were members" was evidently illustrative, not exclusive; in the next sentence the two spokesmen went on to refer to the Commonwealth and the Sterling Area, yet Greece and Turkey have never been a member of either. In fact none of the texts limit Cyprus to membership of organisations of which both Greece and Turkey are members.

[32] By contrast an additional article (Art 3) was added to the Treaty of Guarantee following the meeting of 12 February 1959 to ensure that the British bases in Cyprus were accepted and guaranteed by both Greece and Turkey: FO 371/144640, p 3.

constructive reply from the Greeks and Turks and had thought it proper to raise the issue."[33]

20. Thus the Greek and Turkish negotiators of the Treaty assured first the British Government and subsequently the Cypriot representatives that Article 1 paragraph 2 of the Treaty of Guarantee would not prevent Cyprus becoming a party to international organizations including free trade areas, common currency areas, etc. Its concern was to prevent the two rival aims for which the opposing forces in Cyprus had been fighting during the 1950s, *enosis* or partition leading to *de facto* union with another state, together with any indirect form of arrangement which might achieve the same end, such as a "narrow... customs union" with Greece or Turkey. The *travaux* of Article 1 paragraph 2 confirm that it means exactly what it says, that the use of the singular term "State" is deliberate, and that it is not addressed at international organisations such as the EU.

The attitude of the international community to the Cyprus application for membership

21. This interpretation has also received support from the international community more widely. Cyprus applied for EC membership on 3 July 1990. In its opinion on the application, the European Commission stated:

> "When presenting its application for accession, the Government of the Republic of Cyprus, recognized by the European Community and its Member States as the only legitimate government representing the Cypriot people, addressed the Community on behalf of the whole of the island. The application was strongly challenged by the de facto authorities of the northern part of the island. While acknowledging that it would be in the interest of the Turkish Cypriot community to form part of the European Community, these authorities rejected the right of the Government of the Republic of Cyprus to speak for the whole of Cyprus in such an approach. They based their position on the Guarantee Treaty and the wording of the 1960 Constitution, which grants the President and Vice-President (a Turkish Cypriot) a veto over any foreign policy decision, particularly any decision on joining an international organization or alliance that does not count both Greece and Turkey among its members. They consider, accordingly, that in the prevailing circumstances the Community should not take any on the application. The Community, however, following the logic of its established position, which is consistent with that of the United Nations where the legitimacy of the Government of the Republic of Cyprus and non-recognition of the 'Turkish Republic of Northern Cyprus' are concerned, felt that the application was admissible and initiated the procedures laid down by the Treaties in order to examine it."[34]

The Commission went on to deal with economic and other issues relating to possible accession, reaching a broadly favourable conclusion. For present purposes, however, what matters is that the Commission confirmed, and member states subsequently endorsed, the

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[33] London Committee on Cyprus, Corrected Minutes of the 26th Meeting of the Committee of Deputies, LC (MD), 19 October 1959, p 6.

[34] Commission of the European Communities, *The challenge of enlargement. Commission opinion on the application by the Republic of Cyprus for membership* (*OJEC* Supp 5/93) 7-8.

view that Cyprus is "eligible for membership".[35] That view has since been strongly reaffirmed.[36]

22. The EU's attitude cannot be explained on the basis that from its point of view Cyprus's accession to the EU would prevail over its treaty obligations to a third state, Turkey. On the contrary the EU has been careful to preserve existing treaty rights and obligations, as is shown by Article 234 of the EC Treaty, which expressly preserves such rights and obligations. This concern has been taken fully into consideration in the subsequent adhesion treaties,[37] and it is fully consistent with the law of treaties.[38] The EU's position is, evidently, that Cyprus is not prohibited by its existing treaty obligations either from association with or membership of the Union.

23. Reference may also be made to the position of the United Nations, as expressed by the Security Council in its consideration of the Cyprus question since 1990. The most recent resolution of the Security Council on Cyprus contains the following paragraphs:

> "11. *Reaffirms* its position that a Cyprus settlement must be based on a State of Cyprus with a single sovereignty and international personality and a single citizenship, with its independence and territorial integrity safeguarded, and comprising two politically equal communities as described in the relevant Security Council resolutions, in a bi-communal and bi-zonal federation, and that such a settlement must exclude union in whole or in part with any other country or any form of partition or secession...
>
> 14. *Reaffirms* that the decision of the European Union concerning the opening of accession negotiations with Cyprus is an important development that should facilitate an overall settlement."[39]

These paragraphs also occur in earlier resolutions. The first paragraph has been repeated in successive resolutions since 1990;[40] the second was also contained in SC Resolution 1092 of 23 December 1996. The conjunction of the two paragraphs makes it quite clear that the Security Council regards the accession of Cyprus to the EU as plainly consistent with a renewed commitment to avoid "union in whole or in part with any other country".

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[35] Id. 17. It should be noted that the Turkish Cypriot views referred to in the Commission's Opinion are inconsistent with the view that Art 1 paragraph 2 of the Treaty of Guarantee precludes EU membership. As pointed out above (para 7), Art 1 paragraph 2 is an unconditional prohibition; it is irrelevant whether Greece or Turkey are parties to the political or economic union in question.

[36] See Communication from the Commission to the Council on Reconsideration of the Question of Cyprus's Accession to the European Union, CAB XI/9/95-EN Rev.2 (1995); Council Decision, 6 March 1995; EU-Cyprus Association Council, Common Resolution on the Establishment of a Structured Dialogue between the European Union and Cyprus and certain elements of the strategy to prepare for Cyprus's Accession to the European Union, 12 June 1995; Resolution of the European Parliament, 12 July 1995.

[37] See e.g. Protocol No 17 to the Treaty of Adhesion of Denmark, Ireland and the United Kingdom, 22 January 1972, preserving the Commonwealth Agreement on Sugar.

[38] See Vienna Convention on the Law of Treaties, Art 30 (4).

[39] Security Council Res 1117 (1997), 27 June 1997.

[40] SC Resns 649 (1990), para 1; 716 (1991), para 3; 774 (1992), para 2; 939 (1994), para 2; 1092 (1996), para 14.

24. The question of the accession of Cyprus to the EU has common features, from a legal point of view, with the earlier question of the accession of Austria.[41] Under Article 4 (1) of the Austrian State Treaty of 1955, Austria undertook not to "enter into political or economic union with Germany in any form whatever". Article 4 paragraph 2 amplified that guarantee against another *Anschluss*, in the following terms:

> "In order to prevent such union Austria shall not conclude any agreement with Germany, nor do any measures likely, directly or indirectly, to promote political or economic union with Germany, or to impair its territorial integrity or political or economic independence. Austria further undertakes to prevent within its territory any act likely, directly or indirectly, to promote such union and shall prevent the existence, resurgence and activities of any organizations having as their aim political or economic union with Germany, and pan-German propaganda in favour of union with Germany."[42]

25. Although the matter was discussed following Austria's application in 1989 for EC membership, the view taken was that membership was in no way inconsistent with Article 4 paragraph 2 of the State Treaty. Of the parties to the State Treaty, the USSR initially objected to EU membership, but it did so primarily because EU membership was inconsistent with Austrian neutrality, a subject deliberately not dealt with in the State Treaty.[43] As to the issue of indirect union with Germany, the position of the Austrian Government was that Article 4 was "irrelevant".[44] The EC Commission evidently agreed: in its lengthy report on the Austrian application, it too regarded the State Treaty as irrelevant and focussed exclusively on the issue of neutrality.[45]

26. Austrian and foreign commentators equally dismissed the argument. For example, Lernhardt wrote that Article 4...

> "clearly refers to the bilateral relationship between Austria and Germany. Membership in an association of states could at best be affected by the article if

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[41] The close parallel between the two cases has been noted in the literature: see JH Wolfe, (1984) 76 *Proc ASIL* 111.

[42] UNTS No 2949 (1955). Art 4 is even more detailed and explicit than were Art 88 of the Treaty of St Germain of 1919, or Geneva Protocol No I of 4 October 1922, which were the subject of the decision of the Permanent Court of International Justice in the *Austro-German Customs Union Case* PCIJ Ser A/B No 41 (1931). The majority judgment in that case concluded that the customs union constituted a "special regime" granting "exclusive advantages calculated to threaten [Austria's] independence" contrary to the Protocol of 1922 (at p 52). Judge Anzilotti, who made up the slender majority in that case, disagreed. In his separate opinion he expressed the view that it was the fact of entering into an exclusive union with Germany (as distinct from some other state or states) which constituted the actual threat to Austrian independence, having regard to the strong political movement for *Anschluss*: at pp 68-72.

[43] Cyprus is under no equivalent obligation of neutrality, under the Treaty of Guarantee or otherwise.

[44] See the Government's Report to Parliament (III-113 *Beilagen zu den Stenographischen Protokollen des Nationalrats* XVII GP, para 3.2, reprinted in *Economy Extra*, May 1989, 19). The Government further stated that the European Union did not affect the existence of the Republic of Austria as a democratic and federal State based on the rule of law: *1600 der Beilagen zu den Stenographischen Protokollen des Nationalrats* XVIII GP, 21.

[45] Sec/91/1590 Final, 1 August 1991, summarised in *Bull EC* 7/8-1991, 81.

> this association were entirely dominated by Germany. In the EC, Germany is only one of twelve member-states, without coming even closely to having a majority of votes. With complete justification each of the present EC members would strictly reject any interpretation of its accession as '*Anschluss* with Germany'."[46]

As early as 1963, Ermacora came to the conclusion that the accession to the EEC would not contradict Article 4 of the State Treaty: in his view the prohibition of "*Anschluß*" related to union with a state, not to a supranational community.[47] Similar conclusions were drawn by Seidl-Hohenveldern with regard to the proposed association agreement.[48] On the question whether EU membership would amount *indirectly* to union with Germany, the question was whether German influence or control over the EEC (now EU) amounted to domination, so as to produce indirectly what Article 4 directly prohibited. Again, the unanimous answer was that it would not:[49] on the contrary, the exclusion of Austria from the Common Market, it was concluded, would weaken the economic survival capacity of Austria and, consequently, undermine the objective of Article 4 (2) of the State Treaty.[50] In the event, Austria was admitted to the EU in 1994, without Russian objection and with no amendment having been made to Article 4 of the State Treaty.[51]

27. Similar conclusions apply to the question of the compatibility of an accession of the Republic of Cyprus to the EU. No single Member State of the EU has or claims to have such an influence in either a formal or a material sense over the decision-making procedure of the EU that it could be seen as dominating the EU. Hence, accession of the Republic of Cyprus to the European Union cannot be qualified as an "economic or political union with any State whatsoever".

Article 50 of the 1960 Constitution

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[46] A Lernhardt, *Austria and the European Community. A Guide to Orientation* (trans I Mansfield, Vienna, 1985) 18-19.

[47] F Ermacora, Akademische Vereinigung für Außenpolitik, Universität Innsbruck, *Österreich und die EWG. Das Salzburger Expertengespräch* (1963) 1-58.

[48] I Seidl-Hohenveldern, *Österreich und die EWG* (1963) 142. Similarly J Azizi, "Verfassungsrechtliche Aspekte eines österreichischen EG-Beitritts" in Glatz & Moser (eds), *Herausforderung EG Binnenmarkt* (1989) 267. And see also I Seidl-Hohenveldern, "La neutralité autrichienne et les relations de l'Autriche avec les Communautés européennes" [1963] *Annuaire français de droit international* 826; I Seidl-Hohenveldern, "Österreich und die EWG" (1968) 14 *Jahrbuch für Internationales Recht* 128, 141-3; H Schneider, *Alleingang nach Brüssel. Österreichs EG-Politik* (Europa Union Verlag, Bonn, 1990) 250-1; D Kennedy & L Specht, "Austrian Membership in the European Communities" (1990) 31 *Harvard ILJ* 407.

[49] See e.g. HF Köck, *Ist ein EWG-Beitritt Österreichs zulässig?* (Orac, Vienna, 1987) 14; see also Azizi (1989) 270.

[50] The practice of the various parties to the State Treaty supported these conclusions. No objections were made when Austria and Germany both became members of economic and political international organizations such as GATT or OECD, or when Austria concluded the Free Trade Agreement with the EEC in 1972 (BGBl. Nr. 466/1972; Azizi (1989) 268).

[51] In a Supplementary Note of 21 July 1997, Professor Mendelson seeks to explain the Austrian case by arguing that the Soviet Union consented to release Austria from the constraints of Article 4 of the State Treaty on entry into the EU. This ignores the fact that neither the Soviet Union, nor any other state, suggested at the time that Art IV prevented Austria's entry, notwithstanding that the possibility was expressly considered, and dismissed, in the literature. The Soviet Union was concerned with Austrian neutrality, not with Art IV.

28. We turn to the arguments relating to the Constitution of 1960. Article 50 of the Constitution provides, in part, as follows:

> "1. The President and the Vice-President of the Republic, separately or conjointly, shall have the right of final veto on any law or decision of the House of Representatives or any part thereof concerning-
>
> (a) foreign affairs, except the participation of the Republic in international organisations and pacts of alliance in which the Kingdom of Greece and the Republic of Turkey both participate...
>
> 2. The above right of veto may be exercised either against the whole of a law or decision or against any part thereof, and in the latter case such law or decision shall be returned to the House of Representatives for a decision whether the remaining part thereof will be submitted, under the relevant provisions of this Constitution, for promulgation."

Article 50 defines "foreign affairs" broadly, including "the conclusion of international treaties, conventions and agreements". Under Articles 50 (3) and 52, the right of veto must be exercised within 15 days of the transmission of the law or decision.[52]

29. As a matter of form, we note that Article 50 does not allow the President or Vice-President to veto a law or decision in advance of its consideration by the House of Representatives. More important, however, are certain matters of fact. The first Vice-President of the Republic was Mr Kutchuk, who was elected under Article 39 of the Constitution in December 1959. There has never been another election for the Vice-Presidency.[53] From 1963 constitutional difficulties arose, and the Turkish Cypriot office holders under the Constitution progressively withdrew from participation. Moreover since the Turkish invasion of 1974 the leadership of the Turkish Cypriot community has been seeking the partition of Cyprus and the establishment of a separate Turkish Cypriot state.[54] Accordingly the position in fact is that the provisions of the 1960 Constitution dealing with the Vice-Presidency, as with other provisions for Turkish Cypriot representation in the Government of Cyprus, are presently inoperative. Despite this, as we have noted, the international community continues to recognise that the Government of Cyprus has the normal capacity to represent Cyprus and to conduct its foreign affairs.

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[52] These provisions give effect to Point 8 of the "Basic Structure of the Republic of Cyprus" of 1959. Art 57 (3) of the Constitution also gives a veto in relation to decisions of the Council of Ministers on these matters, to be exercised within 4 days.

[53] Under Art 43, the President and Vice-President have a 5 year term, but they continue to hold office "until the next elected President and Vice-President are invested". Under Art 44, their office becomes vacant on death, resignation or "(d) upon... such absence, other than temporary, as would prevent him to perform effectively his duties". Mr Kutchuk ceased to perform his duties in 1963, and died in 1984. Thus there is no longer a person holding the office of Vice-President.

[54] For our purposes it is not necessary to take sides on the controversies that arose between the two communities over constitutional issues in the period before 1974 (but cf Mendelson Opinion, 39 where a different approach is taken). It is sufficient to note the facts that (a) there is currently no Vice-President; (b) the present leadership of the Turkish Cypriot community is seeking partition and independence, contrary to the Constitution and the Treaty of Guarantee.

30. The question is whether, in these circumstances, Cyprus is prevented from validly acceding to the EU. The answer, in our opinion, is clearly no. Article 50 of the Constitution recognises that Cyprus has the normal capacity of a state to enter into "international treaties, conventions and agreements" and to become a member of all kinds of international organizations and alliances. It provides a procedural veto on such decisions, the veto to be cast by a Vice-President elected and effectively performing his functions under the Constitution. In the absence of a veto duly cast in accordance with Article 50, the decision to accede is valid and effective.

31. Reference should be made here to Articles 27 and 46 of the Vienna Convention on the Law of Treaties. Article 27 provides:

> "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46."

Article 46 in turn provides:

> "1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
>
> 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

Thus the general rule is that a breach of internal law, including constitutional law, is no excuse for failure to comply with international obligations. Moreover such a breach can only be relied upon as a basis for challenging the validity of a treaty in quite exceptional circumstances. Only the state whose constitutional rules have been breached may rely on the breach, and it can only do so in a case of manifest violation. The rule under general international law may be even stricter.[55]

32. Thus even if it could be argued that the accession of Cyprus to the EU would be against the expressed wishes of the Turkish community, the fact remains that, under Article 50, the veto power is vested not in that community as such but in a Vice-President duly elected and effectively performing his functions under the Constitution. At present there is no such person, and Article 50 is simply inapplicable. In any event, in present circumstances an alleged violation of Article 50 would not be "manifest". This was the position taken by the EC when the Association Agreement of 1972 was concluded,[56] and again in its consideration of Cyprus's application for membership.[57] It was confirmed by the European Court of Justice in 1994.[58] It has been the consistent position of the United Nations, for example in the periodic resolutions extending the mandate of UNFICYP, which resolutions

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55 See *Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Jurisdiction and Admissibility)* ICJ Rep 1994 p 112, 122.

56 See above, para 17.

57 See above, para 21.

58 See above, para 3.

have been based expressly on the agreement of the Government of the Republic of Cyprus without any reference to Article 50 of the Constitution.[59]

33. The 1960 Constitution is no doubt unusual in that the three guarantor states have a legally recognised interest in its implementation. But neither the Constitution nor the Treaty of Guarantee give the guarantor states themselves any veto over decisions by the Government of the Republic in the field of foreign affairs, and specifically over decisions to apply for membership of international organisations. The veto power is vested in certain high officials of the Government of Cyprus itself, and that power cannot be transformed into a wholly different and unexpressed veto power to be exercised by the present leadership of the Turkish Cypriots which is seeking to secede from Cyprus (contrary both to the Constitution and the Treaty of Guarantee), let alone by one of the guarantor powers itself. The position in present circumstances is that no Vice-President exists to exercise the veto, and-in the absence of a validly exercised veto in accordance with Article 50, the constitutional authority of the Government to carry on the foreign affairs of Cyprus is unquestionable.

34. That this is the case has been widely recognised. If the argument drawn from Article 50 were valid, this would mean that no treaty concluded by the Republic of Cyprus since 1963 could be valid. This is obviously contradicted by the fact that Cyprus has entered into hundreds of treaties since that date with virtually all states in the world, and their validity has never been challenged despite the impossibility of applying Article 50 of the Constitution.

Article 170 of the 1960 Constitution

35. Article 170 (1) of the 1960 Constitution is also invoked. It provides as follows:

> "1. The Republic shall, by agreement on appropriate terms, accord most-favoured-nation treatment to the Kingdom of Greece, the Republic of Turkey and the United Kingdom of Great Britain and Northern Ireland for all agreements whatever their nature may be."[60]

It is said that, in the event of its accession to the EU, Cyprus will not be in a position to comply with Article 170 so far as Turkey is concerned. But this ignores, *inter alia*, the language of Article 170 itself. Most-favoured nation ("mfn") treatment has only to be extended "by agreement on appropriate terms". In common with other most-favoured-nation clauses, Article 170 does not prohibit Cyprus from entering into agreements which confer benefits on third states. It merely requires that treatment extended to the most-favoured-nation also be extended to each of the guarantors. Moreover, unlike most mfn clauses in

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[59] From the first such resolution (SC Res 186 (1964), 4 March 1964) to the most recent (SC Res 1092 (1966), 23 December 1996, preambular para 3).

[60] Art 170 (2) exempts from the mfn requirement the provisions concerning British bases and military facilities in Cyprus. It reflects Point 23 of the "Basic Structure of the Republic of Cyprus" (1959), and Annex F, Part II of the Treaty of Establishment. The Mendelson Opinion, p 38 cites a discussion at the London meeting of 12 February 1959, where it was said that "The intention was to exclude more favourable bilateral agreements between Cyprus and countries other than the Three Powers, and also to avoid the possibility of either Greece or Turkey securing a more favourable economic position in Cyprus than the other - of Greece, for example, establishing a kind of economic enosis." The key point about this passage is its emphasis on *bilateral* agreements, whether with Greece or third states. Nor does Professor Mendelson discuss the crucial phrase in Article 170, "by agreement on appropriate terms".

treaties, the unilateral undertaking in Article 170 is conditional. Mfn treatment was only to be extended under a subsequent agreement with Cyprus: it was to be a matter for the parties to reach agreement in particular "on appropriate terms" for granting such treatment.

36. It is understood that Turkey has never claimed the benefit of Article 170 of the Constitution. Moreover it is well understood, both among EU members and third states, that entry to the EU does not trigger the general mfn obligations of the entrant to third states. This is consistent with Article XXIV (5) of the GATT,[61] and it is a position which Turkey itself, as a WTO member and an applicant for EU membership, must be taken to have accepted. Indeed, such a position has been expressly accepted in bilateral trade agreements entered into by Cyprus with both Turkey and Greece. The Trade Agreement between Cyprus and Turkey of 9 November 1963 provides in Article 1 for mfn treatment to be extended to duties or charges of any kind on importation of the goods of either country to the other. Article 1 further provides that:

> "The above most-favoured-nation treatment shall not apply:
>
> ...
>
> (c) to privileges, exemptions from taxes (fees), preferences or concessions which each of the Contracting countries has granted or will grant in the future to other countries on account of a present or future participation, entry or association by them to a customs union, a free trade area or an economic community."[62]

Article 1 thus expressly recognises that the mfn obligation in respect of taxes or charges on import of goods is not triggered by more favourable treatment extended by either state to its partners in a free trade area or economic community. The economic community that was envisaged at the time was, of course, the EEC. In the light of this Agreement, as well as of the network of relations created under the association agreements between both Cyprus and Turkey and the EU, it is clear that Article 170 of the Constitution would not require any more favourable treatment to be extended to Turkey in the event of Cyprus becoming an EU member.

37. It should be noted in passing that Article 1 of the 1963 Trade Agreement between Cyprus and Turkey expressly envisages that Cyprus will or may enter an economic community such as the EEC. This contradicts the argument now made that Article 1 paragraph 2 of the Treaty of Guarantee permanently prevents such entry.

Conclusions

38. It has not been necessary in this opinion to deal with any questions that would arise if Article 1 of the Treaty of Guarantee, or Articles 50 or 170 of the Constitution, were to be interpreted so as to preclude Cyprus from acceding to the EU. Even on that assumption, it would be very doubtful whether Turkey could raise any objection, because of its own

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[61] See also the Understanding on the interpretation of Article XXIV of the GATT 1994, in WTO, *The Results of the Uruguay Round of Multilateral Trade Negotiations. The Legal Texts* (Geneva, 1994) 31.

[62] See also the identically phrased Trade Agreement between Cyprus and Greece of 24 August 1962. The Agreements are still in force, neither having been denounced under their Art 11.

breaches of the Treaty of Guarantee.[63] But in our opinion the meaning of the three provisions is clear. Thus questions of estoppel, or of the application of the principle that a party in breach of a treaty provision may not itself rely on it,[64] simply do not arise.

39. For the reasons we have given, there is no basis for the view that Cyprus is prevented by the Treaty of Guarantee, or by any provisions of the Constitution of 1960, from becoming a member of the EU.

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24 September 1997

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[63] For criticism of Turkey for non-compliance with various instruments and resolutions, see e.g. SC Resns 353 (1974), 20 July 1974, para 3; 360 (1974), 16 August 1974, para 1; 367 (1975), 12 March 1975, para 2; 541 (1983), 18 November 1983, paras 1, 2, 7; 550 (1984), 11 May 1984, paras 2-5; 1092 (1996), 23 December 1996, para 2. See also GA Res 37/253 (1983), 13 May 1983, paras 2, 8, 12.

[64] Sometimes formulated in the following terms: *nullus commodum capere de sua injuria propria.*

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